IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

SECOND APPEAL NO.776 OF 2007
WITH
CIVIL APPLICATION NO.1471 OF 2007

Jaykumar Baburao Alamane, .. Appellant.
Vs
Vasant Babu Gurav and ors. .. Respondents.

Mr Uday Bobde h/f Mr Prakash Devji Goriya for the appellant.
Mr Nitin Muley h/f S.Sahastrabudhe for respondent no.1.

CORAM : D.B.BHOSALE,J.
DATED : 29th October, 2007

P.C.:

1. Heard learned counsel for the parties.

2. By this appeal, the defendant has challenged concurrent findings of the courts below, by which a suit filed by the respondnet-plaintiff for redemption of mortgage has been decreed. Mr Bobde,learned counsel for the appellant, submitted that both the courts below have committed a grave error of law in holding that the suit transaction was usufructuary mortgage as against the case of the plaintiff that it was a sale with condition to repurchase the suit land. He submitted that there is no pleading in support of the findings that the transaction was usufructuary mortgage. I perused the judgments of both the courts below so also the averments in the plaint and more particularly the

prayers made therein. The Courts below after having perused the document have interpreted it to hold that it is usufructuary mortgage. In my opinion, both the courts below have interpreted the document correctly. Merely because the word "usufructuary" is not used in the pleading, does not mean that the plaintiff did not plead it to be a mortgage. It is only the document which can indicate the nature of transaction. In my opinion, both the courts below have taken entire evidence on record into consideration in proper perspective and have rightly decreed the suit. No substantial question of law, in my opinion, is raised in the appeal. In the circumstances, the second appeal is dismissed. As a consequence thereof, the civil application stands disposed of.

(D.B.BHOSALE,J.)